IRSTI 10.87.47

Zhao Hongrui [1] Aidarbayev S.[2], Abil S.[3]

[1]Professor, Harbin institute of technology, The humanities and social sciences and law school,
Harbin, China, e-mail: zhao-hongrul@163.com
[2]Doctor of Law, Professor of the Department of International Law
of al-Farabi Kazakh National University, Kazakhstan, Almaty, e-mail: aydarbaevs@gmail.com
[3]Master of the second year of study of the specialty «5B030200 – international law»
of the Al-Farabi Kazakh National University, Kazakhstan, Almaty, e-mail: syrymus@mail.ru

ANALYSIS OF THE WTO AND GATT PRECEDENTS ON ANTIDUMPING AND IDENTIFICATION OF INNOVATIONS IN THE NEW WTO DISPUTE SETTLEMENT PROCEDURE

The article analyzes the practice of the WTO dispute resolution body and cases, which were considered even under the GATT for anti-dumping cases. The result of the analysis is systematization and determination of the general characteristics of the precedents of the above topics, as well as the definition of innovation in the new dispute resolution procedure. To put it more clearly, it should be emphasized that the procedure for settling trade disputes of the WTO Dispute Resolution Body is not entirely new, but has been in effect since the establishment of the organization, but because of article considers precedents that preceded the WTO disputes, there was an objective need to make a comparative analysis between the two procedures on the resolution of trade disputes. The authors distinguish two main innovations, which, in turn, consist of two elements and are mainly expressed in institutional and operational new introductions. Undoubtedly, such a reform of the procedure has a positive effect and increases the effectiveness of measures, which makes the WTO dispute resolution body a more attractive institution for parties to trade disputes. The features of the anti-dumping precedents are based on the specifics of the dispute resolution procedure, which is subject to the norms of the code, developed taking into account the complexities of disputes, the object of which is dumping. Therefore, in determining the general characteristics, the main categories were the stages of the dispute and already in stages, tendencies were derived.

Key words: anti-dumping, GATT, WTO, WTO innovations.

Чжао Хунжуй [1] Айдарбаев С.[2], Әбіл С.[3]

[1]Харбин технологиялық институты, Гуманитарлық және әлеуметтік ғылымдар мен
заң мектебінің профессоры, ҚХР, Харбин, e-mail: zhao-hongrul@163.com
[2]заң ғылымдарының докторы, әл-Фараби атындағы Қазақ ұлттық университеті
халықаралық құқық кафедрасының профессоры, Қазақстан, Алматы қ., e-mail: aydarbaevs@gmail.com
[3]әл-Фараби атындағы Қазақ ұлттық университетінің «5B030200 – Халықаралық құқық» мамандығының
екінші оқу жылының магистранты, Қазақстан, Алматы қ., e-mail: syrymus@mail.ru

Антидемпинг бойынша ГАТТ пен ДСҰ прецеденттерінің анализі және ДСҰ дауларды қарастырудың жаңа тәртібінің инновациясын анықтау

Бұл мақалада антидемпинг бойынша ДСҰ дауларды шешу бойынша органының тәжірибесі мен ГАТТ тұсындағы қаралған істерді талдау жасалады. Ондай талдаудың нәтижесінде аталған даулар бойынша тәжірибені жүйелендіру және ортақ сипаттамаларды анықтау, сондай-ақ даулар қарастыру жаңа тәртібінің инновациясын анықтау жұмыстары жүргізілді. Нақтырақ айтқанда, ДСҰ тұсындағы антидемпинг дауларын шешу тәртібі айтарлықтай жаңа еместігін, ДСҰ құрылғаннан бері әрекет ететін атап өту маңызды. Бірақ мақалада ДСҰ-ға дейін қарастырылған істер талданатынына орай, екі дау шешу рәсімдерін салыстыруға объективтік қажеттілік туындады. Авторлар аталған рәсімдерде институциялық және операциялық өзгерістерде көрінетін өздері

екі құрамды екі негізгі инновацияны атап өтеді. Дау қарастыру тәртібін ондай реформалау жағымды әсер тигізіп, шаралардың нәтижелілігін арттырады. Ол, өз кезегінде, сауда дауларының тараптарына ДСҰ дауларды шешу органын тартымды етеді. Антидемпингтік прецеденттердің ерекшелігі объектісі демпинг болып табылатын дауларға арнайы жасалған кодекс нормаларына бағынатын рәсімдердің өзгешелігінен туындайды. Сондықтан ортақ сипаттамаларды анықтау барысында негізгі категориялар болып дауды қарастыру кезеңдері алдында және сол кезеңдерге сәйкес тәжірибенің үрдістері анықталды.

Түйін сөздер: антидемпинг, ДСҰ, ГАТТ, ДСҰ инновациялары.

Чжао Хунжуй [1] Айдарбаев С.[2], Әбіл С.[3]

[1]Харбинский технологический институт, профессор Школы гуманитарных и социальных наук и юридической школы, КНР, г. Харбин e-mail: zhao-hongrul@163.com
[2]доктор юридических наук, профессор кафедры международного права, Казахский национальный университет имени аль-Фараби, Казахстан, г. Алматы, e-mail: aydarbaevs@gmail.com
[3]магистрант второго года обучения специальности «5В030200 – Международное право», Казахский национальный университет имени аль-Фараби, Казахстан, г. Алматы, e-mail: syrymus@mail.ru

Анализ антидемпинговых прецедентов ВТО и ГАТТ и определение инновации в новой процедуре разрешения споров в ВТО

В статье анализируется практика органа ВТО по разрешению споров и дела, которые рассматривались еще при ГАТТ по антидемпинговым делам. Итогом анализа служит систематизация и вывод общих характеристик прецедентов вышеназванной тематики, также определение инновации в новой процедуре по разрешению споров. Яснее выражаясь, нужно подчеркнуть, что процедура урегулирования торговых споров органа по разрешению споров ВТО не совсем новая, а действует с момента создания организации, но так как в статье рассматриваются прецеденты, которые предшествовали спорам при ВТО, была объективная необходимость провести сравнительный анализ между двумя процедурами по разрешению торговых споров. Авторы выделяют две основных инновации, которые, в свою очередь, состоят из двух элементов и в основном выражаются в институциональных и операционных нововведениях. Бесспорно подобная реформа процедуры несет позитивный эффект и повышает эффективность мер, что делает орган по разрешению споров ВТО более привлекательным институтом для сторон торговых споров. Особенности антидемпинговых прецедентов исходят из специфики процедуры по разрешению спора, которая подчиняется нормам кодекса, разработанного с учетом сложностей споров, объектом которых является демпинг. Поэтому в определении общих характеристик основными категориями служили этапы рассмотрения спора и уже по этапам выводились тенденции.

Ключевые слова: антидемпинг, ВТО, ГАТТ, инновации ВТО.

Introduction

The development of international trade reveals that the globalization of economic processes is intensifying and, with one of its consequences, there is intermediate erosion between the external and internal regulation of international economic exchange. On this basis, a modern international trading system is being formed by organizing center, which is gradually becoming the WTO. The World Trade Organization, is the successor to the General Agreement on Tariffs and Trade (GATT), which was in force since 1947. The WTO is called upon to regulate the trade and political relations of the Organization's participants.

The Agreement on the Establishment of the WTO is an «umbrella» document, to which are attached 27 legal documents regulating: (1) a wide range of issues of international trade in goods; (2) trade in services; and (3) the trade aspects of intellectual property rights. Separate agreements regulate the procedure for resolving trade disputes and the procedure for monitoring trade policies of WTO member countries.

All WTO member countries are committed to the implementation of the main agreements and legal instruments united by the term «Multilateral Trade Agreements.» Thus, from a legal point of view, the WTO system is a kind of multilateral contract (package of agreements), whose rules and regulations regulate approximately 97% of the world trade in goods and services (Mcneill, 2003: 95).

WTO activities aimed at combating dumping were and are a necessity in the context of the integration of the world economy. This explains the strict regulation of actions by member countries and the need to introduce into the local legislation rules of regulatory anti-dumping.

Dumping in the classical form is the export of goods at prices below market prices in the exporting country. As a result, the balance of power between suppliers of a similar product is violated, which are also forced to reduce prices to competitive prices, or to take other steps to protect their products. Dumping requires financial support, which it provides a specific supplier (suppliers) or the state-exporter by subsidizing from the state budget.

The main regulator of foreign trade relations is the World Trade Organization. The normative documents adopted by it also touch upon the topic of dumping, establishing the measures that countries should or should not take to protect their domestic market. The international practice of combating dumping has a longer history, and is therefore more clearly regulated. The GATT (General Agreement on Tariffs and Trade) agreements have been revised to create the WTO Anti-Dumping Agreement, which is a set of rules for trade between WTO members.

The provisions of article 16.4-16.5 of the 1994 Anti-Dumping Code require WTO members to report to the Anti-Dumping Committee on all preliminary or final anti-dumping measures taken and to notify authorities competent to initiate and conduct investigations, as well as national procedures for initiating and conducting investigations. The Committee on Anti-Dumping Practices can create auxiliary bodies if necessary. An example of such a body is the informal group on anti-deception. With the establishment of the WTO, not only a number of international treaties were concluded, but the process of administering justice was improved to resolve disputes arising from new legal regulations. According to experts, in the world of trade, the existence of a mechanism for settling disputes is a necessary condition for carrying out entrepreneurial activities at the international level (William, 2002: 145).

The dispute settlement mechanism operated under the GATT. Moreover, a lot of practice has been developed, although in the sphere of anti-dumping settlement the bulk of it is in the 90s of the twentieth century. However, it was far from perfect in different directions, but primarily because of its non-mandatory nature, which was the reason for the reform. Thomas described the previous mechanism as a trade diplomacy and a quasi-judicial process with two distinct possibilities (Thomas, 1996: 56-57). The decision to establish an arbitration group depended on the contracting parties. The findings were the responsibility of these groups, but their recommendations were not binding on the parties between which the dispute arose. The loser could always block the adoption of the report at the level of the GATT Council.

N. Komuro distinguishes two innovations of the new dispute settlement mechanism (Komuro,1995: 29). The first innovation is the operating one. In turn, it is formed by two components. The first component is the rule of negative consensus. The essence of the rule is that decisions on the establishment of arbitration groups, on the acceptance of reports by arbitration groups and the Appeal Body, on the inclusion of the implementation of a recommendation on the agenda of the Dispute Settlement Body, shall be taken, unless the Dispute Settlement Body decides on the basis of consensus otherwise (WTO agreement annex 2, 1994). The second component – the time frame, information openness, prohibits unilateral response, negotiation procedures. The second innovation is the institutional innovation. In turn, it is also formed by two components. The first component – the dispute settlement body, according to L. Wang, is the umbrella body for the management of the rules and procedures (Wang, 1995: 174). This body has the right to establish arbitration groups, to receive reports from arbitration groups and the Appeal Body, monitor the interpretation of the decision and recommendations, and also authorize the suspension of concessions or other obligations on the basis of the agreements covered. The second component is the Appeals Body. He considers appeals concerning cases submitted to arbitration groups. Unlike the decision of the GATT arbitration groups, certain sanctions may be imposed on governments that do not comply with the conclusions made within the framework of the WTO dispute settlement mechanism. Offset from optional to obligatory justice process is intended to ensure that the national government could no longer ignore the international trade regime, or solutions (Krikorian, 2012: 3). Despite the dissatisfaction of the loser parties, including in the consideration of anti-dumping cases, the dispute settlement mechanism enjoys broad support from participants and is actively used, which in itself is proof of its attractiveness.

Antidumping is recognized as one of the means of protecting trade (Michalopoulos, 2001: 5). The impact of the state on public relations arising in connection with the application of anti-dumping measures is based on a heterogeneous legal material, united by a target. Along with normative acts, international treaties and doctrine, the source of antidumping regulation is judicial precedents, including the decisions of the tribunals established on the basis of universal international treaties, the WTO arbi-

tration groups and the Appeals Body that replaced the GATT arbitration groups.

In WTO documents, there are often such categories as «GATT / WTO precedent» and «precedents of arbitration groups», but there is no unconditional recognition of the binding nature of the GATT / WTO precedents. The Report of the Appeal Body in the case of Japan-Taxes on Alcoholic Beverages notes that the adopted reports of the WTO panel should be taken into account when they are relevant to the dispute, but they are not mandatory, except for the resolution of an individual dispute between its parties (WTO Appellate Body Report, 1996). However, the parties always refer to the reports of the arbitration groups, as well as to the named legal position of the Appeal Body.

In 1947 the provisions on anti-dumping duties were included in art. VI GATT. In 1967, 1979 and 1994 agreements were concluded on the implementation of Art. VI GATT, commonly referred to as anti-dumping codes.

By the middle of 1980s. In the framework of the GATT, only two antidumping cases were considered (Swedish Anti-Dumping Duties and New Zealand – Imports of Electrical Transformers from Finland), but since the 1990s, some contracting parties began to consider the mechanism for the settlement of GATT disputes as an alternative to costly legal protection of anti-dumping cases in foreign jurisdictions. There is even an opinion that, through the dispute settlement mechanism, some states have tried to change the national procedures of opponents that failed to agree on the past rounds of negotiations (Waincymer, 2001: 8 – 9). In recent years, trade disputes over the application of anti-dumping measures constitute a significant part of the work of the arbitration groups and the WTO Appellate Body – even in publications on the WTO dispute settlement mechanism, anti-dumping issues are almost central (Trebilcoock, 2013: 336).

As successful non-tariff barriers are removed and tariffs are reduced in different countries, competing importing countries are subject to increasing pressure. Due to the fact that anti-dumping measures showed their acceptability in any case of «restless» imports, their attractiveness for those seeking protection of the industries and states prone to such protection is obvious, namely:

• Rantings about anti-dumping with accusations of foreigners in injustice or predatory pricing policies aimed at crowding out national competitors from the market form a background for the political justification for political protectionism.

• In practice, anti-dumping legislation establishes special procedures that discriminate against foreign firms and easily allow authorities to detect dumping by foreign firms, while similar or similar situations with national firms will not be considered unfair or predatory under national competition laws.

• The process of investigation leads to the curtailment of imports. Exporters bear significant legal and administrative costs, and importers are in an uncertain situation due to the need to retroactively pay antidumping duties upon completion of the investigation.

• The measure is one-sided. Under GATT / WTO rules, no compensation is provided, no response is allowed.

• In addition, it enables the industry that handles the petition to justify its own inefficiency compared to foreign competitors.

• You can select individual exporters. The GATT / WTO rules do not require multilateral application.

• Antidumping and DOE have proved their complementary effectiveness, i.e. The threat of a formal measure in the framework of anti-dumping legislation provides a lever to force the exporter to voluntarily restrict exports.

Unfortunately, despite the high costs of antidumping, in developing countries, continuing the pernicious tradition of industrialized countries, a new mode of imposing anti-dumping rules appeared in response to complaints of domestic firms about the competition for imports, which appeared in connection with the liberalization of trade. As a result of this trend, by 1996, developing countries accounted for more than half of all anti-dumping cases registered by the WTO. Sixty-one countries with developing economies and economies in transition have notified the new WTO on anti-dumping legislation, and some have asked the World Bank for technical assistance in the development of such legislation. Among them are Costa Rica, Colombia, Chile, Morocco and Indonesia.

Although the agreement on anti-dumping measures signed in the Uruguay Round does not provide for serious disciplinary measures, since the mid-1990s the use of anti-dumping by industrially developed countries has significantly decreased. For such a reduction, the developed countries are increasingly aware that their use of anti-dumping measures did not serve the country's national interests.

Australia may have been the first country to realize that its attempts to weaken the regulation of industry and liberalize trade are undermined by its own anti-dumping measures. Australia has traditionally supported its own production through quantitative restrictions on imports and subsidies. When the Hawke government in the early 1980s began to

pursue a policy of easing these measures, groups of stakeholders began to file petitions on anti-dumping protection on an increasing basis. For several years in Australia, more anti-dumping investigations were launched than any other country. The Hawke government, realizing that anti-dumping almost prevailed over its reform program, pushed through Parliament amendments to the anti-dumping legislation of Australia. The amendments provided an oversight function that allowed the government to determine anti-dumping measures based on its general principles of trade policy.

Before any the parties should try to resolve the disagreements among themselves. They can also invite the General Director of the WTO to act as a mediator or mediator and assistance in reaching a compromise and mutually acceptable solutions. The second stage: the arbitration group (up to 45 days for appointment) of the arbitration group and 6 months for the adoption of the conclusion of the arbitration group). If the negotiations did not help resolve the dispute, the plaintiff sends a request to the LFS about the appointment of the arbitration group. The Arbitration Group helps the LFS to make decisions or recommendations. But, since the report of the arbitration group can be is rejected in the LFS only if there is a unanimous decision by the LFS, then this report is quite difficult to cancel. Conclusions of the arbitration groups should be based on the quoted WTO agreements. The final report of the panel is usually sent out parties to the dispute within six months. In cases not tolerating of cases, including those relating to perishable goods, this period is reduced to three months. In the DRS describes the main stages of the work of the arbitration group. Prior to the first hearing: each party to the dispute represents the arbitration group its position in writing. The first hearing: the claimant country (or the claimant countries) defendant, and countries that have announced their interest in this dispute, represent their positions at the first hearing of the arbitration group. Refutations: all participants in the dispute submit their written refutations and oral arguments at the second meeting the arbitration group. Experts: if one party raises scientific or other technical questions, the panel can consult with experts or designate an expert group to prepare advisory opinion. The first project: the arbitration group represents the descriptive section of his report (facts and arguments on the case) to both parties dispute, gives them two weeks to comment. This the report does not include the conclusions and conclusions of the panel. Interim report: the arbitration panel transmits interim report, including conclusions and conclusions of both parties to the dispute, gives them one week to view the report. Revision: after review by the parties of the dispute between the intermediate report, the panel reviews the report, taking into account the comments of the parties. The revision period of the report should not exceed two weeks. During the review, the panel can hold additional meetings with both sides of the dispute. Final report: three weeks after submission final report to the two parties to the dispute, document is sent to all WTO member countries. If the panel comes to the conclusion that the disputed trade measure violates the agreement or commitment within the WTO, it recommends that bring the measure in question in line with WTO rules. The panel can also suggest ways to bring accordance with WTO rules. The report becomes a decision: the report becomes a solution or an OCR recommendation within 60 days, if the LFS does not accept other solution by consensus. Both parties to the dispute may appeal the report of the panel of arbitrators to the Appeals Body. Sometimes both parties appeal against the conclusions of the arbitration group at the same time. The appellate body can support, change or cancel legal opinions, made by the arbitration group. Usually Appeals last no more than 60 days, in exceptional cases – not more than 90 days. The LFS accepts or rejects the report of the Appellate Body within 30 days, while rejecting the report is possible only on basis of consensus.

Methods

Given the relevance of the topic and the rich historical context, there is no lack of information. On the contrary, a huge amount of information on precedents creates complexity in the systematization of practice. Historical and comparative legal methods play a key role in determining the main stages and specific characteristics of these stages. Also, structurally functional analysis will be widely used, since the identification of general regularities in the full analysis of texts is ineffective, this will be formed from the need to confirm by practice the already planned function or stage of the case, especially highlighting a specific characteristic.

Discussion

Definition of stages of consideration of anti-dumping disputes between WTO and GATT

The anti-dumping precedents of the GATT / WTO can be grouped according to a range of issues, namely:

– dumping;
– damage;
– anti-dumping investigation;
– anti-dumping measures;
– administrative reviews;
– legal liability.

For each of them, the GATT and WTO arbitration groups, as well as the Appellate Body, have developed a certain practice. Let's take a few legal positions as an illustration and start, of course, with dumping.

Dumping. For its detection it is necessary to compare the normal and export price of the goods. The provisions of Art. 2.4 The 1994 Anti-Dumping Code requires a fair comparison, including that if the composite export price of the goods is used, adjustments are made for costs, including duties and taxes paid between the import and resale period, and on the profits received.

Indication of the need for amendments is contained in Art. 2.4 of the 1994 Anti-Dumping Code and expressed in English by the term «should». In paragraph 6.93 of the Report of the WTO Panel of Experts on the Case of the United States, Anti-dumping Measures on Stainless Steel, Plate in Coils and Stainless Steel Sheet and Strip From Korea (WT/ DS179/ R .22.12.2000) noted that this term in the usual sense is optional; its use in art. 2.4 indicates that the WTO participant is not required to make adjustments for costs and profits when compiling the export price. This is due to the fact that the inability to make such amendments can lead only to a higher export price and, consequently, to a low dumping difference – the anti-dumping duty rate. The 1994 Anti-Dumping Code simply permits, but does not require, amendments.

An example of deviation from the requirements of a fair comparison is the zeroing methodology, the issue of which was raised in the framework of the GATT in the case of EC-Anti-dumping Duties on Audio Tapes in Cassettes Originating in Japan, but the report was not adopted (Panel Report ADP/136, 1995). The WTO Appellate Body negatively assessed its use in both the EU and the US (paragraphs 54-55 of the European Communities Report on Anti-dumping Duties on Imports of Cotton-type Bed Linen from India and paragraph 183 Report on the case of US – Final Dumping Determination on Softwood Lumber from Canada)(Appellate Body Report, 2006). A landmark was the case United States – Laws Regulations, and Methodology for Calculating Dumping Margins («Zeroing»).

The US Department of Commerce determined the total dumping difference of the commodity by summing up each individual dumping difference calculated in a group of identical goods. However, he ignored any negative dumping difference (excess of the export price over the normal value) in the group, simply nullifying it. Accordingly, the total dumping difference, which was the total amount of individual dumping differences, was, as a rule, overestimated.

As follows from the findings of the Report of the WTO Appellate Body on this case, he, on the one hand, supported the WTO arbitration panel that the use of the zeroing methodology in the anti-dumping investigation does not meet the requirement of a fair comparison under Art. 2.4.2 of the 1994 Anti-Dumping Code, but, on the other hand, did not agree with it that the use of this methodology in administrative review is in accordance with Art. 9.3 of the same Code.

Thus, the methodology in question cannot be used either during an anti-dumping investigation or during an administrative review. However, according to some reports, the US Department of Commerce continues to use the zeroing methodology in administrative review (Spak, 2012: 1134).

Damage. As noted by J.N. Jackson, dumping in itself does not contradict the GATT obligations (Jackson, 1969: 402). The proof of dumping is a necessary, but insufficient, condition for imposing dumping duties. The second necessary condition is the damage to the national industry.

In Art. 3.1 Anti-Dumping Code of 1994 provides that the establishment of the presence of damage for the purposes of Art. VI GATT is based on positive evidence and involves an objective study of the volume of dumped imports, its impact on the prices of similar goods in the domestic market and the corresponding consequences for domestic producers of such goods.

In determining the damage, the period for which data are used by the authorities is important. In the case of Mexico – Definitive Anti-dumping Measures on Beef and Rice, the WTO panel considered that the calculation of the damage done by the Mexican investigation authorities on the basis of data covering only 6 months of each of the three audited years does not comply with Art. 3.1 Anti-Dumping Code of 1994, as it is not based on positive evidence and does not allow, as necessary, to objectively study the entire current situation, reflecting, without proper justification, only a part of it. Moreover, the specific choice of a limited investigation period is not unbiased, as the investigation authorities knew about the fact that the analyzed period reflects the highest penetration of imports, thus ignoring the data for those

months in which it can be expected that the national industry has succeeded (GATT Panel Report, 2005).

The study of the impact of dumped imports on the national industry requires an assessment of all relevant economic factors and indicators related to the state of industry. Their list is contained in Art. 3.4 Anti-Dumping Code 1994

In paragraph 7.236 of the Report of the WTO Arbitration Panel in the case of Thailand – Anti-dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland (Ibid WT/DS122/R, 2000) it was noted that in determining that Art. 3.4 contains a list of 15 factors that must be studied, the panel did not intend to establish only a «checklist approach» mechanically used simply to be mentioned in some way by the authorities investigating each of these factors. In the circumstances of a particular case, it is also possible that some of them will not be suitable, since their importance or weight may vary, or that some other factors not listed will be considered appropriate. Most likely, Art. 3.4 requires the authorities to properly establish whether there is a fact-based basis for conducting a reasoned analysis of the state of industry and the detection of damage. This analysis is not derived from a simple description of the degree of appropriateness of each individual factor, but probably should proceed from a thorough assessment of the state of industry and taking into account the last sentence of Art. 3.4 contain convincing explanations of how the assessments of the relevant factors led to the definition of damage. Apparently, this legal position is applicable to Art. 3.7 Anti-Dumping Code 1994, which contains a list of threats to property damage.

Anti-dumping investigation. Such an investigation is a time-limited, independent stage of the anti-dumping process, during which the authorities identify the existence of grounds and decide on the application of anti-dumping measures. This procedure is carried out by the authorities using certain techniques.

There are two grounds for initiating an anti-dumping investigation: by application and by post (self-initiation). In Art. 5.4 The 1994 Anti-Dumping Code sets standards for the level of support for an anti-dumping statement by a national industry. In previous codes they were not: art. 5 (a) of the Anti-Dumping Code of 1967 established that investigations are usually initiated on demand on behalf of the affected industry, supported by evidence of dumping and the damage it causes to such an industry. In paragraph 1 of Art. 5 of the 1979 Antidumping Code stipulated that an investigation to determine the existence, extent and effect of the alleged dumping is usually initiated upon written request of the affected industry or on its behalf.

Previously, the administrative practice of the United States proceeded from the assumption that if the applicant indicates that it is referring to the name of industry, then it should be recognized that producers making up more than half of the national production supported the statement (Palmeter, 1996: 55). This practice was the subject of consideration by the GATT arbitration panel in the case of the United States – Imposition of Anti-dumping Duties on Imports of Seamless Stainless Steel Hollow Products from Sweden (GATT Panel Report, 1990). The Arbitration Group came to the conclusion that paragraph 1 of Art. 5 should be interpreted as requiring the authorities to make sure before the opening of the investigation that a written claim is submitted on behalf of the national industry determined in accordance with Art. 4 (paragraph 5.10 of the Report). Although this report was not adopted, nevertheless, according to some reports, the US agreed to adopt the standard (Hudec, 1993: 253-254). One of the techniques of anti-dumping investigation are checks (cameral and exit). Field inspections on the territory of other WTO participants are called on-site investigations (Article 6.7 of the 1994 Anti-Dumping Code).

When considering cases, the arbitration groups and the Appeal Body are guided by such principles as the principle of good faith, efficiency, consistency in interpretation, non-retroactivity of an international treaty, avoidance of conflicts and legal economy.

The main stages of the dispute settlement mechanism of the WTO are considered:

– consultations and mediation;
– process of arbitration groups;
– An appeal;
– implementation of recommendations;
– compensation and response as temporary measures;

In the regulatory legal acts of WTO participants:

1. It can be pointed out that the WTO dispute settlement mechanism can be used (Article 23 of the Central American Amendments on unfair business practices (approved by the Council of Ministers in 1995, No. 12) proclaims that the participant has a resource of regional dispute resolution procedures or corresponding ones WTO procedures);

2. The procedure for applying (Decree of the Council (EC) 1994 No. 3286 «On the establishment of Community procedures in the field of common trade policy in order to ensure the implementation of Community rights based on international trade rules, in particular those envisaged under the auspices of the WTO»);

3. Regulate the implementation of recommendations and decisions of the Dispute Settlement Body (Article 76.1 of the Canada Act of 1984 «On Special Import Measures», Article 129 (a) of the United States Act 1994 «On Uruguay Round Agreements»).

In the event of disputes related to anti-dumping regulation, the provisions of Art. 17.4-17.7 of the 1994 Anti-Dumping Code. Moreover, in case of difference, special rules and procedures stipulated in the Code (paragraph 2 of Article 1 of the Agreement on rules and procedures governing the settlement of disputes) are subject to application. As the researchers note, although the Arrangement on rules and procedures governing the settlement of disputes gives the right to an arbitration group, more formal requirements for the applicability of the arbitration procedure apply in dumping cases.

An on-site investigation is not an obligatory element of an anti-dumping investigation. In the case of Egypt – Definitive Anti-dumping Measures on Steel Rebar from Turkey (Thomas, 1996: 53–81) the WTO arbitration panel deemed the use of the Art. 6.7 of the 1994 Anti-Dumping Code, the words «may» and noted that the choice of this particular word makes it clear that on-site inspections on the territory of other WTO participants are allowed, but not required.

Anti-dumping measures. The concept of these measures is generalizing and includes preliminary and final measures. Both can take different forms.

Preliminary measures are applied to protect national producers from dumping imports in the period prior to the adoption of the final definition (Wolfrum, 2008: 124) and for the purpose of temporary protection of the national industry

In paragraph 4.88 of the report of the WTO panel of the Guatemala-Definitive Anti-Dumping Measures on Gray Portland Cement from Mexico, it was noted that the Anti-Dumping Code of 1994 does not require the application of provisional measures as a precondition for final measures. Preliminary measures are not an obligatory element of the anti-dumping investigation. This is indicated by the norm of Art. 8.1 of the 1994 Anti-Dumping Code, which provides that proceedings in a case may be suspended or terminated without the application of provisional measures in the performance of obligations (Wu, 1995: 49).

This legal position can be considered a continuation of the conclusion of the GATT arbitration panel in the previously mentioned case Swedish Anti-Dumping Duties. In paragraph 8 of the Report on this case it was noted that Art. VI does not oblige the importing State to levy an anti-dumping duty whenever there is a dumping case, or similarly treat all suppliers that apply to this practice. The importing state is authorized to levy an anti-dumping duty only when there is material damage to the national industry or, at least, the threat of such damage.

Final measures are established in the course of and following the results of the investigation and administrative reviews. These include price obligations and anti-dumping duties.

By its legal nature, the anti-dumping duty is a free-of-charge general remuneration. The distribution of revenues from these duties among national producers is not justified.

According to Art. 1003 US 2001 Act «On Agriculture, Rural Development, Food and Drug Administration, and Appropriations of Related Agencies,» tit. VII Act of the USA 1930 «On Tariff» was supplemented by art. 354 (Article 1674c, tit 19 of the Code of Laws of the USA). In item «a» of this article it is stipulated that the duties determined by the order on the antidumping duty are annually subject to distribution (by the Customs Fee Commissioner) between the affected national producers for certain expenses. The initiator of the change was Senator R. Baird, and the amendment received his name. Based on this rule, two payments were made (King, 2002:12). As it follows from paragraph 8.1 of the Report in the case of the United States – Continuation of the Law on Displacement and Subsidies of 2000 (Palmeter, 1996: 43–69), the WTO panel considered that the act of the same name does not comply with Art. Art. 5.4, 18.1 and 18.4 of the 1994 Anti-Dumping Code. The conclusion of the panel was confirmed by the Appeal Body (Appellation Body Report, 2003).

Administrative reviews. The decision on the application of anti-dumping measures may be revoked, amended or left unchanged by the authorities following administrative and judicial review.

The WTO dispute settlement mechanism does not establish a rule for the exhaustion of national remedies.

Disputes based on GATT relate to rights and obligations between WTO members, but not to individuals, and it is believed that the doctrine of exhaustion does not apply to disputes between nations. Neither the GATT nor the WTO have ever adopted a practice requiring the exhaustion of local remedies until the issue is referred to an arbitration group. At the same time, researchers emphasize that arbitration groups can consider anti-dumping cases

before national processes. This is justified by the fact that the panel can raise issues of legal force that many national tribunals simply cannot consider. For this rule, according to P.J. Kuijper, the practice of the lawsuits of the contracting parties in the field of anti-dumping and subsidies is important. Japan, the EU and the US started arbitration group procedures both in parallel with administrative and judicial procedures and without recourse to these procedures in general

Administrative reviews are divided into several types. Some of them are new. Thus, the provisions on the final revision were first included in the anti-dumping legislation of Australia, the EU and Canada in the 1980s. In the Anti-Dumping Code of 1994, Art. 11.3.

In contrast to the anti-dumping investigation, the final revision is by nature promising in that it focuses on the likelihood of continuation or resumption of dumping and damage in the event of the termination of final measures (Czako, Human, 2003: 89).

The basis of the analysis carried out within the framework of the final revision is certain principles. Given the likelihood of continued or resumed dumping and damage caused by the termination of the anti-dumping duty, the findings of the Witness Appeals Board's report in the United States-Sunset Reviews of Anti- dumping Measures on Oil Country Tubular Goods from Argentina (Appellation Bode Reprt, 2004). It confirmed that a positive definition of probability can be made only if there is evidence demonstrating that dumping can occur when the duty is stopped, but not giving grounds to assume that such a result is probable.

The ratio of administrative and judicial reviews has been the subject of the above-mentioned case Mexico – Definitive Anti-dumping Measures on Beef and Rice. In paragraph 7.291 of the Report, it is noted that the authorities are not allowed to reject requests for review, refund or application of duties in an altered amount due to the fact that judicial review of such measures is still ongoing. The WTO arbitration panel considered that Art. Art. 68 and 97 of the 1993 Mexican Law on Foreign Trade, which require the authorities to reject requests for administrative review before the completion of judicial review procedures, do not comply with Art. Art. 9.3.2 and 11.2 of the 1994 Anti-Dumping Code.

Legal liability. In 1955, representatives of New Zealand offered to consolidate at the international level the responsibility of states for dumping their exporters, but the proposal was not adopted. In foreign publications, one can find an indication that anti-dumping legislation is a weapon used by national producers to punish foreign competitors (Jackson, 1969: 412), and an anti-dumping duty, in turn, is equivalent to a fine. Sometimes it is noted that dumping is a violation only when establishing a causal relationship between the dumping of the exporting state and the damage to the national industry in the importing state. There are also emotional estimates of domestic publications in which anti-dumping measures are sometimes equated with sanctions, fines, etc. (Долгов, 1990: 115).

States are not responsible for the dumping practices of their residents, and anti-dumping measures are not a measure of legal responsibility. In this case, the conclusions of the WTO Arbitration Group in the United States-Anti-Dumping Act of 1916 should serve as a guide. In paragraph 6.228 (e) of the Report on this case, it was determined that by providing instead of imposing anti-dumping duties compensation for damages, imposition of fines or imprisonment, the US Act of 1916 «On Income» violates cl. VI GATT. The conclusion of the arbitration group is confirmed by the Appeal Body (Vermulst, 1995: 131–161).

One of the main categories of non-compliance with the requirements of the law is «deception of anti-dumping measures», which can occur when, following the imposition of anti-dumping duties, the importer seeks to avoid the scope of the decision of the authorities of the investigation.

The most detailed application of anti-deceptive measures is regulated in the US and EEC. The EEC practice on the use of anti-deceptive measures was the subject of a study of the GATT arbitration group: for example, in the case of the EEC Regulation on Imports of Parts and Components 39, the panel concluded that the fees imposed on cl. 13 of Council Regulation (EC) of 23.07.1984 N 2176 «On protection against imports, which is the subject of dumping, from countries that did not belong to the European Economic Union or subsidized by these countries» and Council Regulation (EEC) of 11.07.1988 N 2423 « On protection against dumping or subsidized imports from non-member states of the European Economic Community «for goods collected or produced in the EEC by enterprises associated with Japanese producers of goods subject to duties do not comply with the first sentence of paragraph 2 of Art. III and do not justify Art. XX (d) GATT (paragraph 6.1 of the Report). After the adoption of this Report, paragraph 10 of Art. 13 in the EEC was no longer used (Holmes,1995: 164).

Some of the above GATT / WTO anti-dumping precedents, of course, require additional comments. Nevertheless, we can state, in particular, the follow-

ing. Amendments for costs and profits when compiling the export price, on-site inspections and provisional measures are not mandatory.

Violations of the requirements of the Anti-Dumping Code of 1994 include: the use of the methodology of zeroing; damage analysis based on data covering only a few months of each of the three years tested; the imposition of fines or imprisonment instead of anti-dumping duties, as well as the distribution of revenues from their collection between national producers.

The list of legal positions on anti-dumping cases of the GATT and WTO arbitration groups, as well as the Appeals Body, is not limited to the above-mentioned precedents. When considering anti-dumping cases, other legal positions are taken into account. Thus, when examining the United States – Definition of Industry Concerning Wine and Grape Products (GATT Panel Report N SCM/71, 1992), the GATT arbitration panel considered that Art. The GATT VI and the corresponding provisions of the Code should be interpreted narrowly, since they permit actions different from the regime most favored by the nation, in other cases prohibited by Art. I. Proceeding from this, the list of types of damage contained in footnote 9 to art. 3 of the 1994 Anti-Dumping Code, should be interpreted as exhaustive. Such examples can be continued.

In accordance with WTO rules, a member country is not obliged have a special legal or economic interest in subject matter of the dispute. For example, in the EU-Banana case (which is the long dispute over the entire history of the WTO), the United States complaint to the WTO on the issue of the European the alliance of preferential access to European markets banana producers from African, Caribbean and Pacific countries, thereby violating the WTO rules on non-discrimination. At the same time, the US was not an exporter bananas to European markets. However, in most cases, disputed under the WTO, actions or measures member countries directly affect the party initiating investigation.

To date, the following legal positions have been formed by the arbitration groups and the Appellate Body of the WTO:

– The 1994 Anti-Dumping Code does not require the imposition of provisional measures as a precondition for final measures (paragraph 4.88 of the Guatemala-Definitive Anti-Dumping Measurement Gray Portland Cement from Mexico) (Trebilcoock, 2013: 912);

– Art. 3.4 The 1994 Anti-Dumping Code requires the authorities to properly establish whether there is a factual basis for supporting a reasoned and important analysis of the state of industry and the detection of damage (paragraph 7.236 of the Thailand-Anti-dumping Dutieson Angles, Shapes and Sections of Ironer Non-Alloy Steel and H-Beams from Poland «) (Speyer, 2001: 332);

– compensation for damages, imposition of fines or imprisonment instead of imposing anti-dumping duties is a violation of cl. 2 art. VIWAT (paragraph 6.228 (e) of the report on the case «United States – Anti-Dumping Act of 1916») (WT/DS136/AB/R, WT/DS162/AB/R. 28.08.2000);

– imposing a lower duty or accepting a price obligation forms a category of «constructive means of protection» for the purpose. 15 of the Anti-Dumping Code of 1994 (paragraph 6.229 of the European Communities-Anti-dumping Duties on Imports of Cotton-type Bed Linenfrom India);

– The English term «should» in the usual sense is optional, i.e. its use in art. 2.4 of the 1994 Anti-Dumping Code indicates that the WTO participant is not required to make adjustments for costs and profits in compiling the export price (paragraph 6.93 of the United States-Anti-Dumping Measures on Stainless Steel Platein Coils and Stainless Steel «);

– distribution of income from anti-dumping duties to affected national producers does not comply with Art. 5.4, 18.1 and 18.4 of the 1994 Anti-Dumping Code (paragraph 8.1 of the United States-Continued Dumping and Subsidy Offset Act of 2000) ;

– The analysis of damage by the authorities, based on data covering only 6 months of each of the three years tested does not comply with Art. 3.1 of the Anti-Dumping Code of 1994, as this analysis is not based on positive evidence and does not allow for an objective examination of how it is necessary and without a proper justification shows only part of the picture of the situation (paragraph 7.86 of the report on the case of Mexico- Definitive Anti-Dumping Measures nBeefand Rice «) (Yoshida, 2007: 389).

In Global Economic Prospects (1995), it was explained that anti-dumping measures are a common protection measure with a good public relations program. In fact, anti-dumping measures are often more costly for importing countries than for conventional tariff protection measures. The reason that anti-dumping measures are such an expensive form of protectionism is that the threat of an anti-dumping action provides the importing country with a lever to force exporters to enter into regulated agreements that increase export prices. Exporters often face the need to choose between the tariffs that will be applied to their export sales and the agreement to raise

prices («the obligation to raise the price») or restrict sales («voluntary export restriction» or DOE). Due to the fact that exporters, as a rule, can increase their profits by accepting the obligation to raise the price or voluntarily restrict exports, they often prefer a settled agreement to imposing an anti-dumping duty. Sometimes the threat of an anti-dumping measure in itself leads to the resolution of the problem, since the uncertainty of the anti-dumping process itself means the loss of buyers. However, such regulated agreements entail large costs for buyers and importing industries, since they do not provide the government with any tariff revenues. The effect for the importing country is similar to that of the OPEC cartel: exporting countries receive higher prices from importing countries through agreed sales restrictions or minimum prices. Indeed, according to estimates, the costs of the US economy due to their own anti-dumping measures introduced in the 1980s correspond to about half the cost of the US economy caused by an increase in OPEC prices in 1974 (Finger, 1991). The difference between OPEC and anti-dumping measures is that when applying the latter, import prices for consumers and producers are increased as a result of the policy pursued by the importing country

Conclusion

Imitation of industrialized countries largely explains the use of anti-dumping by developing countries. Once they liberalized, they pledged not to raise tariffs for the GATT / WTO and, since the Uruguay Round agreements imposed restrictions on subsidies and other more direct forms of industrial policy, developing countries turned to an instrument that was popular in industrialized countries. To date, policy responses to national costs associated with these actions are not being offered.

If the state needs to provide political support for reforms, it must have the means to analyze the problems that its citizens consider to be special, and decide on the severity of the problem in order, at least temporarily, to abandon the liberalization program, that is, there must be a mechanism that in the national interest provides temporary protection in exceptional circumstances. The main reason why antidumping can not be used for this purpose is that in this case, when determining the need for protective measures, an incorrect question is posed. The correct question is: «Is this an exception to the regime and the introduction of measures to protect national interests»? When antidumping is asked the question: «Is the policy of pricing of foreign firms fair»? The practice of pricing foreign firms is fair or not fair – this aspect does not determine the national interest when introducing measures of protectionism.

In fact, anti-dumping does not control predatory actions. David Palmeeter, a leading Washington specialist who is often recruited as an advisor to the exporters of developing countries besieged by anti-dumping investigations, concludes: «In a certain degree of probability, it can be said that none of the 767 positive definitions for anti-dumping cases in Australia, Canada , The EU and the US in the period between 1980 and 1986, although a predatory pricing policy took place at a distance. « A more conservative conclusion is made on the basis of OECD research that competition from foreign producers does not pose a threat to competition in more than 90 percent of anti-dumping duties imposed in the US and the EU in the 1980s.

There is no unconditional recognition of the precedent in WTO law. However, the abovementioned and other precedents of the arbitration groups, as well as the legal positions of the Appeals Body, should be taken into account when referring to the dispute settlement mechanism. Members of the WTO actively use this source of law to support their arguments, which must be taken into account by the representatives of Kazakhstan.

It should also be noted that when acquainted with the regulatory framework, the institutional system and the WTO dispute settlement mechanism, a deceptive impression can be created about «immense» opportunities. This was noticeable, including on the statements of commentators before Russia's accession to the WTO. As practice shows, the «aggressiveness» of new participants, reinforced by the hope of using the WTO legal instruments, leads to retaliatory actions that usually do not end in favor of newcomers. An example of this is a Memorandum between the PRC and the United States on understanding of the Chinese value-added tax on integrated circuits (Шепенко, 2014: 76-77).

In conclusion, it remains, in particular, to state that the WTO is a formal institutional framework, which is formed by several levels. Trade relations between WTO members are subject to certain international treaties. The GATT of 1947 continued to exist. In the event of disputes related to anti-dumping regulation, not only the Agreement on rules and procedures governing the settlement of disputes, but also the provisions of the 1994 Anti-Dumping Code, is to be applied. The WTO dispute settlement mechanism does not provide for the exhaustion of national remedies. In some issues (for example, about means of protection) there is still uncertainty.

Литература

1 Global Institutions and development: Framing the World? / by M. Boas, D. Mcneill. N.Y.: Routledge, 2003. P.95
2 William J. D. The WTO Dispute Settlement System / Trade, Environmental and the Millennium / by W. B. Chambers, G.P. Sampson. N.Y.: United Nations University Press, 2002, P. 145.
3 Thomas C. Litigation Process under the GATT Dispute Settlement System // Journal of World Trade. 1996. Vol. 30, No. 2. P. 56-57.
4 Komuro N. The WTO Dispute Settlement Mechanism. Coverage and Procedures of WTO Understanding // Journal of World Trade. 1995. Vol. 29.
5 Provisions 6, 16, 17, 21 and 22 // Arrangement on rules and procedures for resolving disputes // annex 2
6 Wang L. Some Observations on Dispute Settlement System in World Trade Organization // Journal of World Trade. 1995. Vol. 29. No. 2. P. 174.
7 Provision 1, part 2 // Arrangement on rules and procedures for resolving disputes // annex 2
8 Krikorian J. D. International Trade Law and Domestic Policy: Canada, The United States, and WTO. UBC Press, 2012. P. 3.
9 Michalopoulos C. // Developing Countries in the WTO. N.Y., 2001. P. 5.
10 WTO Appellate Body Report. Japan – Taxes on Alcoholic Beverages (Japan – Alcoholic Beverages). Document N DS8/AB/R, DS10/AB/R, DS11/AB/R.
11 Waincymer J. Implication for Anti-dumping and Countervailing // Free Trade Agreement – Opportunities & Challenges. Canberra, 2001. P. 8 – 9
12 Trebilcoock M., Howse R., Eliason A. // The Regulation of International Trade. N.Y., 2013. P. 336.
13 Panel Report. Document N ADP/136. Circulation of 28 April 1995. Unadopted
14 Appellate Body Report. Document N WT/DS141/AB/R. Adopted 1 March 2006
15 Spak G.J., Hensen F.S., Hickman D.J. 2011 International Trade Decisions of Federal Circuit // American University Law Review. 2012. Vol. 61. Iss. 4. P. 1134
16 Jackson J.H. // World Trade and the Law of GATT. N.Y., 1969. P. 402.
17 GATT Panel Report. Document N WT/DS295/R. paragraph 7.89. Adopted 6 June 2005
18 Ibid. Document N WT/DS122/R. Adopted 28 September 2000
19 Palmeter D. A Commentary on the WTO Anti-dumping Code // Journal of World Trade. 1996. Vol. 30. N 4. P. 55.
20 GATT Panel Report. Document N ADP/47. Circulation of 20 August 1990. Unadopted.
21 Hudec R.E. Enforcing International Trade Law: The Evolution of GATT Legal System. Butterworth, 1993. P. 253 – 254
22 Thomas C. Litigation Process under the GATT Dispute Settlement System // Journal of World Trade. 1996. Vol. 30, №2. P. 53–81.
23 WTO – Trade Remedies / Ed. by R. Wolfrum, R.-T. Stoll, M. Koebele. Leiden, 2008. P. 124.
24 Wu S.Y. Anti-dumping in Taiwan. A Reflection on the First Ten Years // Journal of World Trade. 1995. Vol. 29. N 2. P. 49.
25 King N. Trade Imbalance: Why Uncle Sam Wrote a Big Check to a Sparkler Maker // Wall Street Journal. 2002. N 12
26 Palmeter D. A Commentary on the WTO Anti-dumping Code // Journal of World Trade. 1996. Vol. 30, №4. P. 43–69.
27 Appellation Body Report. Document N WT/DS217/AB/R, WT/DS234/AB/R. Adopted 16 January 2003.
28 Czako J., Human J., Miranda J. A Handbook on Anti-dumping Investigation. Cambridge, 2003. P. 89.
29 Appellation Bode Reprt. Document N WT/DS268/AB/R. // paragraphs 307 to 308. Adopted 29 November 2004.
30 Jackson J.H. World Trade and the Law of GATT. N.Y., 1969. P. 412.
31 Долгов С.И., Васильев В.В. Гончарова С.П. и др. Основы внешнеэкономических знаний: Словарь-справочник. – М., 1990. – С. 115.
32 Vermulst E, Driessen B. An Overview of the WTO Dispute Settlement System and its Relationship with the Uruguay Round Agreements. Nice on Paper but Too Much Stress for the System? // Journal of World Trade. 1995. Vol. 29,№2. P. 131–161.
33 Holmes S. Anti-Circumvention under the European Union's New Anti-dumping Rules // Journal of World Trade. 1995. Vol. 29. N 3. P. 164
34 GATT Panel Report. Document N SCM/71. Adopted 28 April 1992.
35 Trebilcoock M., Howse R., Eliason A. The Regulation of International Trade. Taylor & Francis, 2013. 912 p
36 Speyer B. Dispute Settlement. A Gem in need of Polish and Preservation /The World Trade Organization Millennium Round: Freer Trade in the Twenty-First Century / by K.G. Deutsch, B. Speyer. L.: Routledge, 2001. 332 p.
37 WT/DS136/AB/R, WT/DS162/AB/R. 28.08.2000
38 WT/DS141/R.30.10.2000.
39 WT/DS217/R, WT/DS234/R. 16.09.2002
40 Yoshida T., Ito K. Thailand / Antidumping Laws and Practices of the New Users / by J. Nakagava. L.: Cameron May, 2007. 389 p
41 Шепенко Р.А. Курс антидемпингового регулирования. – М.: ООО «Проспект», 2014. – С. 76-77.

References

1 Appellate Body Report. (2006) Document N WT/DS141/AB/R.
2 Appellation Body Report. (2003) Document N WT/DS217/AB/R, WT/DS234/AB/R.
3 Appellation Body Report. (2004) Document N WT/DS268/AB/R. // paragraphs 307 to 308.

4 Czako J., Human J., Miranda J. (2003) A Handbook on Anti-dumping Investigation. Cam-bridge. P. 89.

5 Dolgov C. I., Vasiliev V.V.,Goncharova S. P., (1990) Osnovy vneshneeconomicheskyh znanii [Bases of foreign economic knowledge]: slovar-spravochnik. Moskva, p. 115;

6 GATT Panel Report. (1990) Document N ADP/47. Circulation of 20 August. Unadopted.

7 GATT Panel Report. (1992) Document N SCM/71.

8 GATT Panel Report. (2005) Document N WT/DS295/R. paragraph 7.89.

9 Holmes S., (1995) Anti-Circumvention under the European Union's New Anti-dumping Rules. Journal of World Trade. Vol. 29. N 3. P. 164

10 Hudec R.E., (1993) Enforcing International Trade Law: The Evolution of GATT Legal Sys-tem. Butterworth. P. 253 – 254

11 Ibid. (2000) Document N WT/DS122/R. Adopted 28 September.

12 Jackson J.H., (1969) World Trade and the Law of GATT. N.Y. P. 402.

13 Jackson J.H., (1969) World Trade and the Law of GATT. N.Y. P. 412

14 King N., (2002) Trade Imbalance: Why Uncle Sam Wrote a Big Check to a Sparkler Maker. Wall Street Journal. N 12.

15 Komuro N., (1995) The WTO Dispute Settlement Mechanism. Coverage and Procedures of WTO Understanding. Journal of World Trade. Vol. 29.

16 Krikorian J. D., (2012) International Trade Law and Domestic Policy: Canada, The United States and WTO. UBC Press. P. 3.

17 M. Boas, D. Mcneill, (2003) Global Institutions and development: Framing the World?. N.Y., Routledge. P.95

18 Michalopoulos C., (2001) Developing Countries in the WTO. N.Y., P. 5.

19 Palmeter D. A., (1996) Commentary on the WTO Anti-dumping Code Journal of World Trade. Vol. 30, №4. P. 43–69.

20 Palmeter D. A., (1996) Commentary on the WTO Anti-dumping Code. Journal of World Trade. Vol. 30. N 4. P. 55.

21 Panel Report. (1995) Document N ADP/136. Circulation of 28 April. Unadopted

22 R. Wolfrum, T. Stoll, M. Koebele. (2008) WTO – Trade Remedies. Leiden. P. 124.

23 Report of the Appellate Body. (2000) EUROPEAN COMMUNITIES – ANTI-DUMPING DUTIES ON IMPORTS OF COTTON-TYPE BED LINEN FROM INDIA. WT/DS141/R.

24 Report of the Appellate Body. (2000) UNITED STATES – ANTI-DUMPING ACT OF 1916. WT/DS136/AB/R, WT/DS162/AB/R.

25 Report of the Appellate Body. (2000) United States – Continued Dumping and Subsidy Offset Act of 2000 WT/DS217/R, WT/DS234/R.

26 Shepenko R. A., (2014) Kurs antidempingovogo regulirovania. [The course of anti-dumping regulation]. OOO «Prospect». p. 76-77.

27 Spak G.J., Hensen F.S., (2012) Hickman D.J. 2011 International Trade Decisions of Federal Circuit. American University Law Review. Vol. 61. Iss. 4. P. 1134

28 Speyer B., Deutsch K.G., (2001) Dispute Settlement. A Gem in need of Polish and Preservation /The World Trade Organization Millennium Round: Freer Trade in the Twenty-First Century. Routledge. p. 332.

29 Thomas C., (1996) Litigation Process under the GATT Dispute Settlement System. Journal of World Trade. Vol. 30, No. 2. P. 56-57.

30 Thomas C., (1996) Litigation Process under the GATT Dispute Settlement System. Journal of World Trade. Vol. 30, №2. P. 53–81.

31 Trebilcoock M., Howse R., Eliason A., (2013) The Regulation of International Trade. N.Y., P. 336.

32 Trebilcoock M., Howse R., Eliason A., (2013) The Regulation of International Trade. Taylor & Francis. p. 912.

33 Vermulst E., Driessen B., (1995) An Overview of the WTO Dispute Settlement System and its Relationship with the Uruguay Round Agreements. Nice on Paper but Too Much Stress for the System?. Journal of World Trade. Vol. 29, №2. P. 131–161.

34 Waincymer J., (2001) Implication for Anti-dumping and Countervailing. Free Trade Agreement – Opportunities & Challenges. Canberra. P. 8 – 9.

35 Wang L., (1995) Some Observations on Dispute Settlement System in World Trade Organiza-tion. Journal of World Trade. Vol. 29. No. 2. P. 174.

36 William J. D., (2002) The WTO Dispute Settlement System and Trade, Environmental and the Millennium. N.Y., United Nations University Press, P. 145.

37 WTO agreement. (1994) Arrangement on rules and procedures for resolving disputes. Provision 1, part 2. annex 2.

38 WTO agreement. (1994) Arrangement on rules and procedures for resolving disputes. Provisions 6, 16, 17, 21 and 22. annex 2

39 WTO Appellate Body Report. (1998) Japan – Taxes on Alcoholic Beverages (Japan – Alco-holic Beverages). Document N DS8/AB/R, DS10/AB/R, DS11/AB/R.

40 Wu S.Y., (1995) Anti-dumping in Taiwan. A Reflection on the First Ten Years. Journal of World Trade. Vol. 29. N 2. P. 49.

41 Yoshida T., Ito K., (2007) Thailand. Antidumping Laws and Practices of the New Users / by J. Nakagava. L. Cameron May. p. 389.